

**REPORT OF THE GOVERNOR'S NATURAL RESOURCES
FUNDING COMMISSION**

**RECOMMENDATIONS TO ADDRESS
THE CRITICAL FUNDING NEEDS OF
VIRGINIA'S NATURAL RESOURCE
PROGRAMS**

TO THE GOVERNOR OF VIRGINIA



**COMMONWEALTH OF VIRGINIA
RICHMOND
OCTOBER 9, 2003**



COMMONWEALTH of VIRGINIA

Office of the Governor

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October 9, 2003

The Honorable Mark R. Warner
Governor of Virginia
State Capitol
Richmond, Virginia 23219

Dear Governor Warner:

In your Natural Resources Partnership Agenda, you established the Natural Resources Funding Commission and charged it with developing recommendations on permanent funding strategies to support natural resource programs, including recommendations regarding funding for water quality and land conservation. The Commission remembered well your assertion at the Governor's Natural Resources Summit in Williamsburg that "Virginia has historically underfunded its natural resource efforts." The Commission embraced its charge and over the last several months has worked diligently to assemble strategies through which the Commonwealth can elevate itself from its unenviable ranking of 50th in state spending on natural resources among all of the states. It was clear to all of us that Virginia must do more to ensure the health and vitality of our environment and protect the great variety of natural resources we all enjoy.

Implementation of the Commission's recommendations will further our Administration's commitment to Virginia's environment and land conservation, and address our constitutional mandate that makes natural resources a core responsibility of state government. Pursuing these recommendations will enable us to make strategic investments in our natural resources that will strengthen Virginia's future and help towards building One Virginia, One Future - a Virginia where the people can have clean air, pure water, and the use and enjoyment of adequate public lands, waters and other natural resources.

I am pleased to present you with the Commission's recommendations and I look forward to discussing them with you. Thank you for the opportunity you have given the

The Honorable Mark R. Warner
October 9, 2003
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Commission to offer its collective wisdom towards adequately funding major environmental initiatives to protect Virginia's wealth of natural resources for the benefit, enjoyment, and general welfare of today's citizens and visitors, as well as future generations.

With the submission of this report, the work of the Commission is complete and the Commission is dissolved; however, should you wish to call upon former members for assistance and support in the future, I feel confident that each would respond favorably.

Respectfully submitted on behalf of the Commission,

A handwritten signature in dark ink, reading "W. Tayloe Murphy, Jr." in a cursive script.

W. Tayloe Murphy, Jr.

Attachment

cc: The Honorable William H. Leighty, Chief of Staff

NATURAL RESOURCES FUNDING COMMISSION MEMBERSHIP

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SUMMARY

This report, developed by the Governor's Natural Resources Funding Commission, presents recommendations on permanent funding strategies to support natural resource programs, especially water quality and land conservation. The Commission mirrored the diversity of business, governmental, environmental, outdoors, and private interests represented at the Governor's Natural Resources Summit and met on 5 occasions to develop these recommendations. The charge to the Commission was based upon the Governor's Natural Resources Partnership Agenda that resulted from the Governor's Natural Resources Summit held in Williamsburg in April of 2003. The Governor noted at this Summit that "Virginia has historically underfunded its natural resource efforts." The recommendations in this report outline strategies to address these funding shortfalls.

The Commission studied the current status of natural resources funding. It was noted that the share of total state appropriations (general funds plus non general funds) devoted to the entire Natural Resources Secretariat in FY 2004 is less than one percent (0.96%), or as one Commission member phrased it, less than "one green penny". It was also recognized that in FY 2004, only 0.60 percent of the state's general fund is devoted to the Natural Resources Secretariat – a 52 percent decline in the Natural Resource share of state general funds since FY 2000. The U.S. Census Bureau data for FY2000 ranked Virginia 50th in state spending on natural resources among all of the states on a per capita basis and as a percentage of state spending.

Based upon the documented natural resource needs, there was unanimity among Commission members that the current budget appropriations - \$74 million in annual general funds and \$252 million in all funds - does not provide the revenue necessary to address the Commonwealth's constitutionally established core responsibility to protect our natural resources. One Commission member referred to the current funding crisis as "Facing Natural Resources Bankruptcy" and another as not being able to "fulfill the promises we have made". In order to determine the magnitude of the needs, the Commission reviewed presentations that identified unmet fiscal needs on the order of \$561 million per year to meet

water quality and land conservation commitments, Chesapeake Bay commitments, operational and maintenance requirements, and to address critical capital project needs.

The Commission believes that increased funding for the Commonwealth's natural resource programs would improve our air, waters, and lands, and would have a positive impact on Virginia's state and local economies, and that, conversely, a failure to increase the funds available will result in the degradation of Virginia's environment and hurt the economies that are based on healthy natural resources. Several polls of likely voters have clearly illustrated the public's overwhelming support for the protection of Virginia's natural resources.

General and Non General Fund Recommendations

The Commission expressed unanimous support for increases in both general and non-general fund expenditures for natural resources, with an emphasis on improving funding for land conservation and water quality improvement in the Commonwealth.

A. General Fund

Based on the importance of a healthy environment and conserved natural resources to the quality of life for all Virginians, the demonstrated unmet needs, and the public support for natural resources funding, the Commission offers the following recommendations regarding general funds.

- 1) The Governor's call to action is a wake-up call to all Virginians to refocus on the Commonwealth's natural resources. The Governor should continue to affirm his commitment to natural resources as a Constitutionally established core responsibility of state government and challenge the General Assembly to recognize this priority as well.
- 2) The Governor should make no further general fund budget reductions within the Natural Resources Secretariat in the next and subsequent bienniums.

- 3) General Fund reductions experienced by the Secretariat since FY2000 have exceeded \$70 million. In the first year of the next biennium (FY2005), the Governor should restore \$22 million to the Natural Resources Secretariat. The restored funds should be targeted towards natural resource priorities, not necessarily directed solely to the replacement of lost agency positions and programs. (Note: The \$22 million represents the net decrease in general fund appropriations experienced by the Secretariat since adoption of the 2002-04 budget and would bring the Secretariat back to 0.78% of the FY2004 state general fund budget.) (Natural Resources is the only Secretariat within state government that has had an actual dollar decline in total funding [general fund and non general fund] since FY 2000, around \$23 million.)
- 4) In the second year of the next biennium (FY2006), the Governor should propose increasing the Natural Resources Secretariat's general fund budget by an additional \$27 million to boost natural resources funding to a total that represents 1% of the FY2004 state general fund budget and thereafter have as a goal further increases in general funds for natural resources. (Note: 1% still remains less than the U.S. average of 1.47%.)
- 5) The Governor should ensure that adequate funding (1% and growing) for natural resources is included in the Roadmap for Virginia's Future currently under development.
- 6) The Department of Forestry, although not a member of the Natural Resources Secretariat, has significant land and water quality conservation functions and as such should receive similar considerations as that being requested by this Secretariat.

These recommendations, when fully implemented, would provide an additional \$49 million in general funds to address some of the priority needs of the Natural Resources Secretariat. In addition, the Department of Forestry expressed a need for almost \$8 million.

B. Non General Fund

With regard to non-general funds, the Commission recognized that in the near term, existing general funds would be insufficient to address the natural resource needs and commitments that have been demonstrated and that non-general fund mechanisms have to be selected to properly address current funding needs. The Commission offers the following recommendations.

1. Submit legislation for the 2004 General Assembly Session that establishes a Virginia Natural and Historic Resources Fund (VNHRF).
2. The VNHRF should initially receive monies from two funding mechanisms, a \$2 per month Water Utility Fee (\$45.8 million) and a \$10 Document Recording Fee (\$20 million), as well as be authorized to receive other public and private monies.
3. Allocations from the VNHRF are to be divided evenly between the Virginia Water Quality Improvement Fund (WQIF) and the Virginia Land Conservation Fund (VLCF). The Commission recognizes a broad list of Natural Resources Secretariat needs, but due to the limited funds generated from these funding sources, and the substantial needs documented to meet water quality and land conservation commitments, has recommended distribution to only WQIF and VLCF. Should additional funding beyond these recommendations become available in the future, strong consideration should be given to addressing other documented needs. (Note: Three other funding mechanisms received full evaluation and consideration but did not receive full support from the Commission to include as a recommendation. A

discussion of these additional mechanisms that were considered is included, beginning on page 11 of this report.)

These recommendations would generate almost \$66 million in non-general funds per year and would leverage an additional \$85 million in federal, local, and private match. That amount represents over a 129% match to the state revenue.

In addition to these recommendations, there was widespread sentiment within the Commission that upon creation of the Virginia Natural and Historic Resources Fund that consideration should be given to protecting from diversion all revenue deposited to the Fund by whatever means available, including, without limitation, a Constitutional Amendment.

COMMISSION CHARGE AND MEETINGS

Commission Charge

“The Governor will appoint a Commission on Natural Resources Funding consisting of 12-15 members, primarily Summit participants, to review recommendations made at the Summit on permanent funding alternatives, incentives, and other means to support specific natural resource programs. The Commission will submit recommendations to the Governor by September 1, 2003, including recommendations regarding funding for water quality and land conservation.” (From the Governor’s Natural Resources Partnership Agenda, April, 2003)

Commission Meetings

The meetings of the Governor’s Natural Resources Funding Commission were as follows:

June 11, 2003 – Discussions of Commission charge, Governor’s Partnership Agenda, status of Natural Resources funding, and Commission information needs.

July 8, 2003 – Presentations on funding needs, funding strategies utilized by other states, Virginia’s bonding options, and overview discussions on Non General funding alternatives for Virginia.

July 29, 2003 – Discussion of Non General funding mechanisms and selection of potential strategies. Preliminary discussions on allocations and legislation outline.

August 21, 2003 – Discussion of General Fund needs and recommendations to the Governor. Discussion of refined Non General funding alternatives and preliminary review of draft legislation. Discussion of report outline.

September 15, 2003 – Reviewed and refined draft report, recommendations, and legislation.

All meetings were held at the Department of Environmental Quality’s First Floor Conference Room at 7th and Main Street in Richmond, Virginia and were open to the public.

THE CASE FOR NATURAL RESOURCES FUNDING INCREASES

The Call to Action - Constitutional Mandate, Governor's Natural Resources Leadership Summit, and Partnership Agenda

In 1971, a new Virginia Constitution was adopted that included Virginia's first public policy declaration on conservation. Article XI of the Virginia Constitution states:

“To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters and other natural resources, it shall be the policy of the Commonwealth to conserve, develop and utilize its natural resources, its public lands and its historical sites and buildings. Further it shall be the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment or destruction for the benefit, enjoyment and general welfare of the people of the Commonwealth.”

The inclusion of this provision in the State Constitution is significant in that conservation and education are the only two programmatic areas identified by the people of Virginia as the core responsibilities of state government.

Recognizing this important mandate, Virginia's natural resources challenges and obligations, and the importance of natural resources issues to the health, safety, and welfare of the Commonwealth's citizens and visitors, Governor Warner called for the development of a partnership agenda that will help direct natural and historic resources initiatives for at least the next three years. “The way we manage our natural resources has an impact on every Virginian today and well into the future,” said Governor Warner. The Governor's Natural Resources Leadership Summit, held in Williamsburg in early April, brought together a diverse group of over 130 individuals representing business, development community, conservation, government, sportsmen, historic preservation, and others. This Summit was the first working session of its kind in Virginia.

Summit participants were asked to generate solutions to natural resources problems and how to build partnerships to reach natural resources goals and objectives. No single issue generated as much interest as the need for funding for Virginia's natural and historic resources programs. Governor Warner

noted in his opening address at the Summit that, “Virginia has historically underfunded its natural resource efforts.” Summit participants agreed that these programs have been historically under-funded when compared to program needs, and that the recent budget crisis has compounded the problem. They also noted that the relative impact of recent cuts on operations and programs has been significant due to the low level of natural resource agency budgets.

As a result of the Summit, the Governor developed a Natural Resources Partnership Agenda that calls for three actions related to “Increasing Natural Resources Funding”.

- 1) If general fund revenues require further belt tightening, the Governor will work to minimize the effect on natural and historic resource agencies and maintain existing services.
- 2) The Governor will appoint a Commission on Natural Resources Funding consisting of 12-15 members, primarily Summit participants, to review recommendations made at the Summit on permanent funding alternatives, incentives, and other means to support specific natural resource programs. The Commission will submit recommendations to the Governor by September 1, 2003, including recommendations regarding funding for water quality and land conservation.
- 3) The Governor and Cabinet will work closely with Virginia's congressional delegation to ensure the Commonwealth receives its full share of federal natural resource dollars.

Pursuant to the agenda, a Natural Resources Funding Commission was appointed and has generated this report to address its charge.

House Joint Resolution 255

During the 2002 General Assembly Session, the Legislature passed House Joint Resolution 255 requesting the Secretary of Natural Resources to examine options for providing a stable source of funding for conservation of open space. This report also addresses this charge.

Natural Resources Budget Status

An August 2003 draft report prepared for the Nature Conservancy Action Fund by Fiscal Analytics, Ltd., found that the share of total state appropriations (general fund and non general fund) devoted to the Natural Resources Secretariat in FY 2004 is less than one percent (0.96%) (Figure 1) or as one Commission member phrased it less than “one green penny”. Natural Resources is the only Secretariat within state government that has had an actual dollar decline in total funding (general fund and non general fund) since FY 2000, around \$23 million.

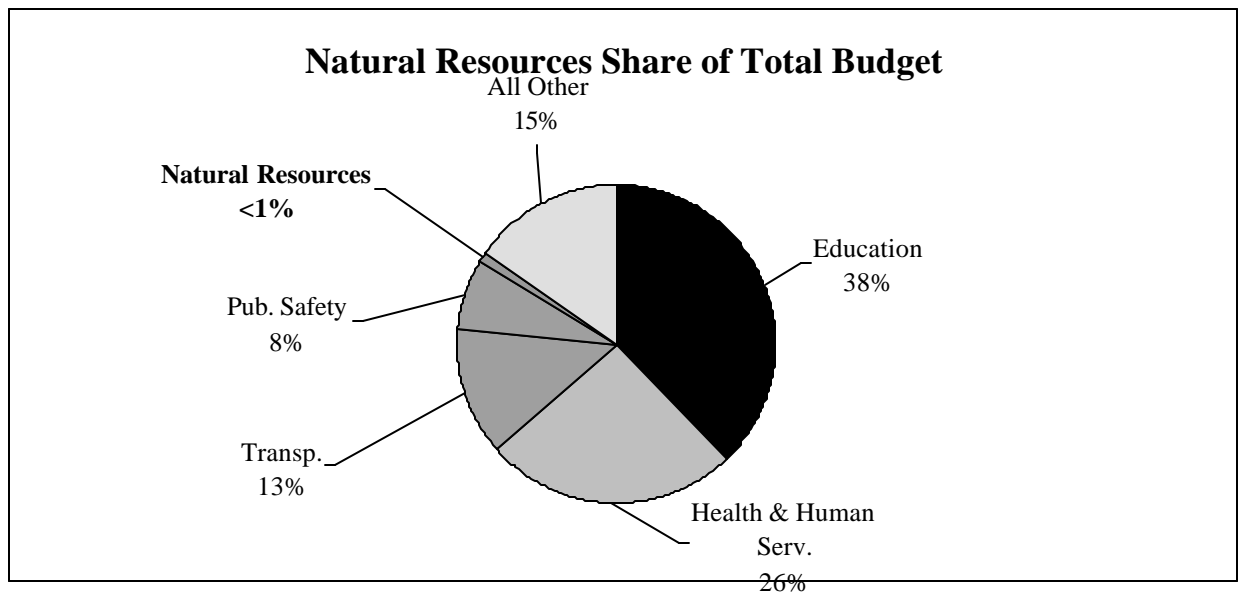


Figure 1: Natural Resources Secretariat's Share of Total State Budget

The report also found that the Natural Resource agencies have suffered an even larger decline in state general funds since FY 2000, over \$70 million. With only 29 percent of Natural Resource funding now coming from general funds, agencies are being forced to rely more heavily on fees, other dedicated revenues, and federal funds. In FY 2004, only 0.60 percent of the state's general funds is devoted to the Natural Resources Secretariat (Figure 2).

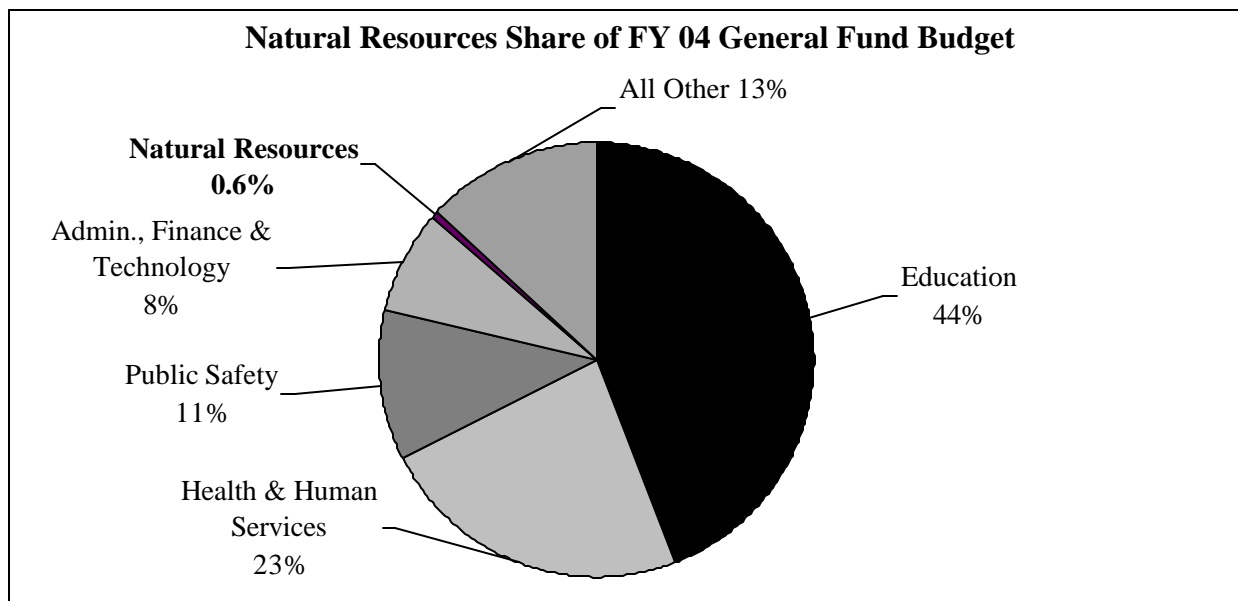


Figure 2: Natural Resources Secretariat's Share of State General Fund Budget

Table 1, taken from the October 2002 report prepared for the League of Conservation Voters Education Fund by Fiscal Analytics, LLC, reports U.S. Census Bureau data for FY2000 that ranks Virginia 50th in state spending on natural resources among all of the states on either a per capita basis, or as a percentage of state spending.

Table 1: Virginia Ranking in Natural Resources Spending
Comparison of Natural Resources Spending in Surrounding States
FY2000

State	Natural Resources		
	Expend. (\$ mil.)	% of Expend.	Per Capita
Virginia	\$182.9	0.75	\$25.83
West Virginia	\$151.1	2.00	\$83.56
Tennessee	\$228.9	1.36	\$40.23
Pennsylvania	\$626.8	1.31	\$51.04
Maryland	\$438.7	2.26	\$82.83
North Carolina	\$568.2	1.92	\$70.59
Kentucky	\$270.4	1.72	\$66.90
U.S. Average		1.47	\$56.89

With general fund allocations diminishing, Natural Resource agencies are being forced to rely more heavily on fees, other dedicated revenues, and uncertain federal funds. The lack of state funding support means meeting the multi-billion dollar funding commitments for the Chesapeake Bay cleanup and other water quality and environmental issues will be even harder to achieve.

Natural Resources Funding Needs

The existing Natural Resources Budget, \$74 million in annual general funds and \$252 million in all funds, cannot provide the revenue necessary to address the Commonwealth's environmental commitments and priority needs. One Commission member referred to the current funding crisis as the Commonwealth is "Facing Natural Resources Bankruptcy" and another as not being able to "fulfill the promises we have made". The Commission has discussed increasing general fund revenue back to 1% or "one green penny" of the state's general fund budget or by \$49 million per year. Members of the Commission have also suggested that the Commonwealth should give its "2 cents worth" or 2% of general funds to natural resources which would amount to an additional \$172 million in general funds per year beyond the existing \$74 million.

The Commission recognized that significant needs exist within natural resources programs that far outpace existing revenue. While there was no discussion on the specifics or priorities of these needs, Table 2 lists some of the most pressing needs identified by the Agencies. The Commission discussed that some of the identified needs should be met from general fund sources, while others may be more appropriately met from non-general sources. It also recognized that many of the large ticket items such as funding the Water Quality Improvement Fund or establishing a dedicated source of funding for land conservation can only realistically be addressed through non-general fund mechanisms.

Table 2: Examples of Natural Resources Key Funding Needs

Agency	<u>EXAMPLES OF GENERAL FUND NEEDS</u>	Amount (State Share)
CBLAD	CBLAD Grants to Local Governments and Soil and Water Conservation Districts	\$1.5 million per year
DCR	State Park Management Funds for Public Safety and Customer Satisfaction	\$1.4 million per year
DCR	State Match for Conservation Reserve Enhancement Program (CREP)	\$1.7 million per year

DHR	Permanent Archiving Measures for Statewide HR Records	\$1,450,000 (one time project costs) and \$150,000 per year
DHR	Provide adequate preservation services in south central, southwest, and northern Virginia	\$670,000 per year
DEQ	Funding for Environmental Education and Pollution Prevention Programs	\$910,000 per year
DEQ	Funding for Water Quality, Wetlands, Hazardous Waste, and Solid Waste Permit Programs	\$8 million per year
VMRC	Oyster Replenishment	\$2.25 million per year
DGIF	Development of Electronic Point-Of-Sale License Sales System	\$1 million one time
DOF	Forest Legacy Match Resources	\$1.25 million per year
DOF	Restoration of Riparian Corridors through Forest Plantings	\$600,000 per year
VMRC	Homeland Security Support for VMRC	\$2,780,000 per year
DGIF	Homeland Security Support for DGIF	\$1.3 million first year; and \$600,000 each subsequent year
NR	Consolidation and Improvement of stormwater management programs	Estimated \$1.3 million each year
NR	Combined Natural Resources Operational Priorities Identified	\$5,906,500 per year
	Total for Example General Fund Needs	~\$32 million per year
	<u>EXAMPLES NON GENERAL FUND NEEDS (or general fund if available)</u>	
DEQ	Clean up and Restoration of Water Quality (Point Source)	\$60 million per year
DCR	Clean up and Restoration of Water Quality (Nonpoint Source)	\$349.5 million per year
DEQ	Water Supply Planning	\$2.5 million per year
DEQ	Clean up and Restoration of Contaminated Property (Brownfields Remediation and Redevelopment)	\$550,000 per year
VLCF	Virginia Land Conservation Foundation Funding to Protect Farmland, Forest, Open Space, Parks, Natural Areas, Wildlife Areas and Historic Lands	\$80 million per year
DCR	Development of 5 New State Parks	\$8 million per year
DCR	Capital Improvements, Maintenance, and Operations of Parks	\$28 million per year
DCR	High Hazard Dam Infrastructure Repairs	\$2 million per year
DHR	Statewide Historic Resources Surveys	\$1 million per year
	Total for Example Non General Fund Needs	~\$531.55 million per year

Funding for Natural Resource priorities, such as those items mentioned above, will allow the Commonwealth to address environmental risks such as the annual loss of large acreages of forest land, prime agricultural crop land, and open space to development, the historic lows in blue crab populations, and the threats to our native oyster population. The Commonwealth also has more than 650 stream

segments - 1,459 miles - that do not fully protect aquatic life or wildlife, recreational use such as boating and swimming, and other beneficial uses.

Virginia currently has no permanent source of funding for land conservation and for financial incentives that promote water quality improvement through both point and nonpoint source programs. Additionally, Governor Warner, as Chair of the Chesapeake Bay Executive Council, has committed to putting Virginia on the road to meeting its commitment to nutrient and sediment pollution reduction in the Chesapeake Bay and its tributaries.

In addition to water quality, the Governor is committed to ensuring an adequate water supply for Virginia's citizens. Virginia's experience with the recent drought and Hurricane Isabel has underscored the importance of a comprehensive approach to providing and protecting sufficient clean water for citizens, businesses, and farmers while at the same time protecting our water resources. Likewise, the Governor has also recognized the importance of environmental education through the appointment of the Virginia Environmental Education Commission. This Commission supports the Governor's vision of expanding and enhancing environmental education in K-12, colleges and universities, and in community based programs.

It is safe to say that Virginia's environmental needs are great and that current funding is insufficient to address these important needs and commitments. As Secretary of Natural Resources W. Tayloe Murphy, Jr. stated in his remarks on the release of the Partnership Agenda, "The very clear message from summit participants is that Virginia must do more to ensure the health and viability of our environment and the great variety of resources we enjoy".

Positive Effects on Virginia's Economy

Increased funding for the Commonwealth's natural and historic resource programs will have a positive impact on Virginia's economy. For almost 400 years our resource based industries – farming, forestry and fishing – have been an important part of our economic prosperity, and they retain that importance even in today's technology driven economy.

Our natural and historic resources fuel a \$13 billion tourist industry, which employs nearly a quarter of a million Virginians, ranking third in the state's economy. The top destinations are historic and cultural sites and scenic areas. Nearly 275 historic sites generate more than 6.5 million visits annually. Our state parks welcomed over 7 million visitors last year, almost 40% from out-of-state, and visitors contributed \$150 million to the state and local economies. Tourists take advantage of Virginia's natural resources for a variety of recreational activities.

In 2001, state residents and nonresidents spent \$1.9 billion dollars on wildlife recreation in Virginia. Nearly \$789 million dollars was spent in 2001 on wildlife-watching activities in Virginia. Resident and nonresident hunters spent \$321 million dollars in 2001. Virginia forests provide over \$30 billion in benefits annually to Virginia's economy including more than \$3 billion in recreation spending. Agriculture is Virginia's top industry, contributing nearly \$36 billion in annual sales.

Public Support for Natural Resources Funding

Poll and after poll clearly expresses the public's overwhelming support for the protection of Virginia's natural resources and demonstrates their strong interest in making the protection and management of Virginia's natural resources a high priority investment for the Commonwealth.

Citizen support in Virginia for land conservation and the resources on that land has historically been very strong. Opinion polls have repeatedly confirmed this support. Poll highlights include:

- 89% of Virginia's voters rate Open Space conservation a top priority. The Tarrance Group & The Kitchens Group, April 2001;
- 82% of the citizens feel our natural areas will soon be lost forever unless we act now and save them, The Tarrance Group & The Kitchens Group, April 2001;
- 77% of the citizens support state funds to acquire land to protect natural areas from development, DCR 2000 VA Outdoors Survey; and,
- 69% of the voters supported the passage of the 2002 Virginia State Parks and Natural Areas Bond.

Citizen support for Chesapeake Bay restoration is also strong with over 2/3 of Virginia's residents live in the Bay Watershed. In March and April 2002, the Chesapeake Bay Program

combined efforts with Virginia Tech to gain a better understanding of Bay watershed residents' knowledge, perceptions, and attitudes toward the Chesapeake Bay and its restoration by conducting a telephone survey of nearly 2,000 watershed residents. The survey found that nearly 90 percent of Chesapeake Bay watershed residents are concerned about the health of the Chesapeake Bay and its rivers and streams. However, the survey also found that nearly half the watershed's residents do not understand that their daily actions have a direct impact on water quality locally and in the Bay. "The survey confirms that the people of the Chesapeake Bay watershed see the Bay as a special place – a national treasure that deserves to be protected and restored," said EPA Chesapeake Bay Program Director Rebecca Hanmer. Key findings include:

- 94 percent of respondents believe that restoring waterways in the Chesapeake Bay region is important;
- 89 percent of respondents are concerned about pollution in the Bay;
- 85 percent are concerned about pollution in their local waterways; and
- 49 percent believe the current restoration efforts are "too little;" 2 percent believe they are "too much."

GENERAL FUND RECOMMENDATIONS

Based on the importance of a healthy environment and conserved natural resources to the quality of life for all Virginians, the demonstrated unmet needs, and the public support for natural resources funding, the Commission offers the following recommendations with unanimity regarding general funds.

- 1) The Governor's call to action is a wake-up call to all Virginians to refocus on the Commonwealth's natural resources. The Governor should continue to affirm his commitment to natural resources as a Constitutionally established core responsibility of state government and challenge the General Assembly to recognize this priority as well.
- 2) The Governor should make no further general fund budget reductions within the Natural Resources Secretariat in the next and subsequent bienniums.
- 3) General Fund reductions experienced by the Secretariat since FY2000 have exceeded \$70 million. In the first year of the next biennium (FY2005), the Governor should restore \$22 million to the Natural Resources Secretariat. The restored funds should be targeted towards natural resource priorities, not necessarily directed solely to the replacement of lost agency positions

and programs. (These funds will be applied towards the general fund priority needs such as those outlined in Table 2.) (FY04 Baseline \$74 million + Restore \$22 million = FY05 Baseline \$96 million) (Note: the \$22 million represents the net decrease in general fund appropriations experienced by the Secretariat since adoption of the 2002-04 budget and would bring the Secretariat to 0.78% of the FY2004 state general fund budget.) (Natural Resources is the only Secretariat within state government that has had an actual dollar decline in total funding [general and non general fund] since FY 2000, around \$23 million.)

- 4) In the second year of the next biennium (FY2006), the Governor should propose increasing the Natural Resources Secretariat's general fund budget by an additional \$27 million to boost natural resources funding to a total that represents 1% of the FY2004 state general fund budget and thereafter have as a goal further increases in general funds for natural resources. (Note: FY05 Baseline \$96 million + Increase \$27 million = FY06 Baseline \$123 million) (1% of FY2004 state budget = \$122.8 million) (Note: 1% still remains less than the U.S. average of 1.47%.)
- 5) The Governor should ensure that adequate funding (1% and growing) for natural resources is included in the Roadmap for Virginia's Future currently under development.
- 6) The Department of Forestry, although not a member of the Natural Resources Secretariat, has significant land and water quality conservation functions and as such should receive similar considerations as that being requested by this Secretariat.

These recommendations, when fully implemented, would provide an additional \$49 million in general funds to address some of the priority needs of the Natural Resources Secretariat. In addition, the Department of Forestry expressed a need for almost \$8 million.

NON GENERAL FUND DISCUSSION AND RECOMMENDATIONS

Natural Resources Funding Strategies Considered

The Commission recognized that in the near term, existing general funds would be insufficient to address the natural resource needs that had been demonstrated and that several non-general fund mechanisms had to be selected to properly address current funding needs. The Commission instructed

staff to compile a list of funding mechanisms utilized by other states to fund their natural resources programs that included:

lottery revenue, recordation tax, lodging tax, fuels tax, income tax check off, conservation stamps, license and permit fees, sales and use tax, license plates, waste disposal fees, bonds, tobacco products tax, and a host of other measures.

After studying this funding compendium, the Commission developed a list of funding strategies to be further studied by staff for potential use in Virginia (APPENDIX 1). These included:

water fees (wastewater discharge fees, sewage connection fees, water connection fees, water consumption fees), electric utility fees, tipping fee, permit fees, recordation tax, document recording fee, lottery, automotive fees, petroleum product fees, estate tax, tobacco tax, fertilizer fee, biosolids fee, service fees, cellular phone tax, and excise taxes on outdoor products.

Criteria established to guide the selection of possible funding mechanisms included, nexus between funding source and use of funds, ease of collection, breadth of applicability to the general public, stability of funding source, amount of revenue that would be generated, ease of understanding by the public and decision makers, and feasibility of legislation/ regulations. Utilizing these criteria, out of the list of funding mechanisms studied, five were advanced for full evaluation and discussion by the Commission (Table 3). Unanimous agreement on each of the five funding alternatives listed in Table 3 was impractical to expect given the diversity of membership. Following deliberation, the consensus of the Commission was to recommend the first two funding mechanisms listed below, mechanism 1 (water utility fee) and mechanism 2 (document recording fee), totaling \$65,893,832. Consensus could not be reached by the Commission on funding mechanisms 3 through 5 for the reasons outlined in the Table.

Table 3: Proposed Funding Mechanisms for Natural Resources Programs

Fee	Charge	Revenue Generated
1) Water Utility Fee	\$2 per month	\$45,893,832

(Each owner of a waterworks shall collect and remit to the State Treasurer, for deposit in the Virginia Natural and Historic Resources Fund, \$2 per month for each customer account.) (Note: Expansion of this funding mechanism in the future to well owners should be strongly considered if a good fee collection mechanism could be developed.) (Support from municipalities was not gauged by the Commission.)

2) Document Recording Fee \$10 charge \$20,000,000

(In addition to the \$3 fee already established in Title 17.1, the clerk of each circuit court shall assess a \$10 fee in each law and chancery action, upon each instrument to be recorded in the deed books, and upon each judgment to be docketed in the judgment lien docket book. Revenue from the \$10 fee shall be deposited by the State Treasurer into the Virginia Natural and Historic Resources Fund.)

3) Tipping Fee on Municipal Solid Waste \$3 per ton \$36,000,000

(The operator of each landfill, incinerator or resource recovery facility permitted to dispose of or treat municipal solid waste shall remit to the Department of Environmental Quality, for deposit into the Virginia Natural and Historic Resources Fund, \$3.00 for each ton of municipal solid waste disposed of or treated.)

Opinions expressed on funding mechanism #3:

- Imposing this fee would split the environmental community unless funds are exclusively used for cleanup.
- Significant opposition within portions of the waste industry and some local government opposition is likely.
- Economic impacts and divisiveness of the issue.

4) Petroleum Fee \$0.006 per gallon \$36,000,000

(In addition to existing fuel fees already going to Natural Resources there shall be imposed an additional fee of three-fifths of one cent on each gallon of specified fuels sold and delivered or used in the Commonwealth. As with the existing fees, the new fee shall be remitted to the Department of Motor Vehicles and the additional amount generated shall be deposited in the Virginia Natural and Historic Resources Fund.)

Opinions expressed on funding mechanism #4:

- Trucking industry will oppose. Already pay excessive taxes and would not support this revenue going to other than highway construction and repair.
- Could be unpopular in Northern Virginia.
- Gas producers would not support.
- Approach is broad-based and could be easily collected. Small fee could generate significant revenue for Natural Resources.

5) Electric Utility Fee	\$2 per month	\$75,265,632
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(Each distributor shall collect and remit to the State Treasurer, for deposit in the Virginia Natural and Historic Resources Fund, \$2.00 per month per each metered and nonmetered account.)

Opinions expressed on funding mechanism #5:

- Utility opposition.
- The approach is similar to, but broader than, the water utility fee as it would also pick up well users. Meets nexus criteria.

Other issues the Commission discussed included:

- a. Whether the new revenue should be deposited into a single fund for subsequent distribution to recipient funds via a set percentage;
- b. Whether the new revenue should be allocated by a Board rather than a set percentage to maintain annual flexibility of allocations;
- c. Whether the recipient funds for this new revenue should be broad to address the key funding needs of the Secretariat or whether revenue should be focused towards the Virginia Water Quality Improvement Fund and the Virginia Land Conservation Fund only.

Non General Fund Recommendations

Following deliberation of the issues noted above, the following non-general fund recommendations were offered:

- 1) Submit legislation for the 2004 General Assembly Session that establishes a Virginia Natural and Historic Resources Fund (VNHRF). See APPENDIX 2 for fund establishment Code language and APPENDIX 3 for supplemental Code changes.

- 2) The VNHRF should initially receive monies from two funding mechanisms, a \$2 per month Water Utility Fee (\$45.8 million) and a \$10 Document Recording Fee (\$20 million), as well as be authorized to receive other public and private monies.
- 3) Allocations from the VNHRF are to be divided evenly between the Virginia Water Quality Improvement Fund (WQIF) and the Virginia Land Conservation Fund (VLCF). The Commission recognizes a broad list of Natural Resources Secretariat needs, but due to the limited funds generated from these funding sources, and the substantial needs documented to meet water quality and land conservation commitments, has recommended distribution to only WQIF and VLCF. Should additional funding beyond these recommendations become available in the future, strong consideration should be given to addressing other documented needs.

These recommendations would generate almost \$66 million in non-general funds per year.

In addition to these recommendations, there was widespread sentiment within the Commission that upon creation of the Virginia Natural and Historic Resources Fund that consideration should be given to protecting from diversion all revenue deposited to the Fund by whatever means available, including, without limitation, a Constitutional Amendment.

Recipient Funds

The Virginia Natural and Historic Resources Fund would allocate revenue equally to both the Virginia Water Quality Improvement Fund (WQIF) and the Virginia Land Conservation Fund (VLCF) for the purposes noted below.

Virginia Water Quality Improvement Fund

Provides Water Quality Improvement Grants to local governments, soil and water conservation districts, institutions of higher education and individuals for point and nonpoint source pollution prevention, reduction and control programs and other water quality efforts. Funds to address water quality program needs including TMDLS, tributary strategies and other Chesapeake Bay

Agreement commitments, Conservation Reserve Enhancement Program obligations, and other nutrient and sediment reduction needs, have been demonstrated to be over \$400 million per year. Allocations to this fund peaked in FY1999 at about \$31 million and have since declined to no deposits in FY2003.

Virginia Land Conservation Fund

Provides grants to state agencies and matching grants to other localities and 501(c)(3)'s for acquiring land or easements on properties. The Fund also provides monies to the Virginia Outdoors Foundation. In FY00 \$1.75 million was deposited to the Fund and in FY01, \$9.6 million was deposited with \$3.4 million of it earmarked for match for specific battlefield protection projects. No deposits have been made to the Fund since FY01. State needs of \$80 million per year have been identified to meet the Chesapeake Bay Agreement's land conservation commitment of protecting 20% of the Bay Watershed by 2010.

Natural Resources Match Potential

Table 4 outlines the potential match to state dollars from federal, local, and private sources. We anticipate that \$66 million in state monies would generate over \$85 million more dollars including almost \$27 million in federal funds and over \$58 million in local and private funds. That amount represents over a 129% match to the state revenue.

Table 4: Federal, Local, and Private Match Potential for State Funds

Fund Match Potential					
Fund	Percentage allocation	State	Federal	Local/Private	Total
Virginia Land Conservation Fund	50%	\$32,946,916	\$6,589,383	\$26,357,533	\$65,893,832
Virginia Water Quality Improvement Fund	50%	\$32,946,916	\$20,400,000	\$31,671,916	\$85,018,832
Total	100%	\$65,893,832	\$26,989,383	\$58,029,449	\$150,912,664

APPENDICES

APPENDIX 1 – Potential Funding Mechanisms Considered by the Commission

Source	Rate*	Measure	Unit	Billing	Quantity	Unit	Revenue
Water Utility Fee							
Municipal System	\$1.00	Connection	Billing Cycle	Month	1,912,243	Connections	\$22,946,916
Private Wells	\$1.00	Well Permit	Local Tax Bill	Annual	1,000,000	Well	\$1,000,000
Water Withdrawal Fee							
Consumptive use/municipal	\$1.00	1000	Gallon	Annual	1307	MGD	\$477,055,000
Sewer Access Fee							
Residential Connection							
Municipal System	\$1.00	Connection	Billing Cycle	Month	1,700,000	Households	\$20,400,000
Septic or On-Site Treatment	\$1.00	Connection	County Taxes	Annual	827,400	Households	\$827,400
Commercial Connection	\$1.00	Connection	Billing Cycle	Month	92,000	Businesses	\$1,104,000
Industrial Connection	\$1.00	Connection	Billing Cycle	Month	445	Industries	\$5,340
Wastewater Discharge Fee							
Permit Fees							
Industrial Permits	\$1.00	1000	Gallon	Annual	2,858	MGD	\$2,858,000
Municipal Permits	\$1.00	1000	Gallon	Annual	1,223	MGD	\$1,222,500
Discharge Fees							
Industrial Actual Discharge	\$1.00	1	MGD	Daily	2,858	MGD	\$1,043,170
Municipal Actual Discharge	\$1.00	1	MGD	Daily	1,223	MGD	\$446,213
On-Site Treatment Fees	\$1.00	1	MGD	Annual	26,000	MGD	\$ 9,490,000
Document Recording Fee							
Recordation tax	\$0.01	\$100	Recordation	Annual	\$166	Billion	\$16,600,000
Recorded Instruments	\$1.00	Recording	Instrument	Annual	2,000,000	Recordations	\$2,000,000
Tipping Fee							

Municipal Solid Waste	\$1.00	1	Ton	Annual	12	Million Tons	\$12,000,000
Petroleum Fee							
Gas Tax	\$0.001	1	Gallon	Annual	6	Billion Gallons	\$6,000,000
Fertilizer Fee							
Bulk Sale	\$1.00	1	Ton	Annual	700,000	Tons	\$700,000
End Use, Non Agricultural	\$1.00	50	Pound Bag	Annual	1,400,000	50 Pound Bags	\$1,400,000
Biosolids Fee							
Application Fee	\$1.00	1	Ton	Annual	200,000	Tons	\$200,000
Cell Phone Surcharge							
End User Fee	\$1.00	Invoice	Billing Cycle	Monthly	3,000,000	Accounts	\$36,000,000
Tobacco							
Tax on Cigarettes	\$1.00	1	Pack	Annual	600	Million	\$600,000,000
DMV							
Motor Vehicle Registration Fee	\$1.00	Registration	Vehicle	Annual	6,000,000	Registrations	\$6,000,000
Income Tax							
Exemption Surcharge	\$1.00	1	Personal Exemption	Annual	6,301,945	Personal Exemptions	\$6,301,945
Electric Utility Fee							
Connection Fee	\$1.00	Invoice	Billing Cycle	Monthly	3,136,068	Connections	\$37,632,816

*Note: To serve as a comparative example of what could be generated from each potential funding source, the rate was set at \$1.00 in most cases.

APPENDIX 2 – Primary Code Changes to Establish and Manage the Virginia Natural and Historic Resources Fund

Chapter 21.2.

The Virginia Natural and Historic Resources Fund

§10.1-2503. Statement of Policy

As stated in Article XI of the Constitution of Virginia, it is the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historic sites and buildings, and to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth. The General Assembly recognizes that this policy cannot be implemented without adequate funding for the necessary and essential conservation of the state's natural resources for the benefit of Virginians, now and in the future. The Governor and General Assembly therefore finds it is in the public interest to establish the Virginia Natural Resources Trust Fund to support the protection, restoration or preservation of ecological, cultural and historic resources, water quality improvement and environmental enhancement, open space and recreational space preservation, and other natural and historic resource protection activities.

§10.1-2504. Virginia Natural and Historic Resources Fund, established

A. There is hereby created in the state treasury a special permanent, nonreverting, interest bearing fund to be known as the Virginia Natural and Historic Resources Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of fees assessed under § 10.1-2505 and § 10.1-2506, all of which shall be credited to the Fund. The Fund shall also consist of moneys appropriated to it by the General Assembly and such other sums as may be made available to it from any other source, public or private, all of which shall be credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year, shall not revert to the general fund but shall remain in the Fund. This Fund shall be exempt from assessments by the Department of Accounts for expenses incurred by central service agencies.

1 B. On a quarterly basis, all revenue, including interest, deposited to the Fund unless otherwise
2 designated to a specified use upon deposit, shall be allocated in the following manner: (i) 50% to the
3 Water Quality Improvement Fund, and (ii) 50% to the Virginia Land Conservation Fund. Any monies
4 deposited to the Fund for a specified use will be distributed as designated.

5 **§10.1-2505. Water Utility Fee.**

6 A. Each owner of a waterworks, as defined in §32.1-168, shall collect and remit to the State
7 Treasurer, for deposit in the Virginia Natural and Historic Resources Fund, \$2 per month for each
8 customer account. Payment shall be made within thirty days of the end of each quarter, with the first
9 payment due by October 30, 2004. The owner may, on a quarterly basis, withhold \$10,000 or three
10 percent of the amount due, which ever is less, for the purposes of covering administrative costs
11 associated with the remittance of the fee to the Commonwealth.

12 B. The number of customer accounts will be based upon the best available information provided
13 by the owner to the Department of Health in the same manner and subject to the same provisions as
14 data submitted for implementation of §32.1-171.1.

15 **§10.1-2506. Additional fee to be assessed by circuit court clerks for natural resources.**

16 In addition to the fees established pursuant to § 17.1-279, the clerk of each circuit court shall
17 assess a \$10 fee in each law and chancery action, upon each instrument to be recorded in the deed
18 books, and upon each judgment to be docketed in the judgment lien docket book. Such fee shall be
19 deposited by the State Treasurer into the Virginia Natural and Historic Resources Fund. The State
20 Treasurer shall maintain a record of such deposits.

1 **APPENDIX 3 – Supplemental Code Changes to Accompany Language in Appendix 2**

2 NOTE: This supplemental language is the recommendation of the Secretariat and has not been
3 discussed by the Commission.

4 **Virginia Natural Resources Funding Commission**
5 **2004 Session of the General Assembly**

6
7 **Draft Legislation**

8
9 *A BILL to amend and reenact §§ 10.1-1018, 10.1-1020, 10.1-1021, 10.1-1801.1, 10.1-2128,*
10 *10.1-2129, 10.1-2131, 10.1-2132, and 10.1-2134 of the Code of Virginia, and to amend*
11 *the Code of Virginia by adding in Subtitle II of Title 10.1 a chapter numbered 21.2, consisting*
12 *of sections numbered 10.1-2503 through 10.1-2506, relating to the establishment of a*
13 *Virginia Natural and Historic Resources Fund.*

14
15 **Be it enacted by the General Assembly of Virginia:**

16 **1. That §§ 10.1-1018, 10.1-1020, 10.1-1021, 10.1-1801.1, 10.1-2128, 10.1-2129, 10.1-2131, 10.1-**
17 **2132, and 10.1-2134 of the Code of Virginia are amended and reenacted, and that the Code of**
18 **Virginia is amended by adding in Subtitle II of Title 10.1 a chapter numbered 21.2, consisting**
19 **of sections numbered 10.1-2503 through 10.1-2506, as follows:**

20
21 **§ 10.1-1018. Virginia Land Conservation Board of Trustees; membership; terms;**
22 **vacancies; compensation and expenses; chairman's executive summary.**

23 A. The Foundation shall be governed and administered by a Board of Trustees. The Board
24 shall consist of 18 members that include 17 citizen members and one ex officio voting member as
25 follows: four citizen members, who may be members of the House of Delegates, to be appointed by the
26 Speaker of the House of Delegates and, if such members are members of the House of Delegates, in
27 accordance with the principles of proportional representation contained in the Rules of the House of
28 Delegates; two citizen members, who may be members of the Senate, to be appointed by the Senate
29 Committee on Privileges and Elections; 11 nonlegislative citizen members, one from each
30 congressional district, to be appointed by the Governor; and the Secretary of Natural Resources, or his

1 designee, to serve ex officio with voting privileges. Nonlegislative citizen members shall be appointed
2 for four-year terms, except that initial appointments shall be made for terms of one to four years in a
3 manner whereby no more than six members shall have terms that expire in the same year. Legislative
4 members and the ex officio member shall serve terms coincident with their terms of office. Appointments
5 to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies
6 shall be filled in the same manner as the original appointments. All members may be reappointed.
7 However, no Senate member shall serve more than two consecutive four-year terms, no House member
8 shall serve more than four consecutive two-year terms and no nonlegislative citizen member shall serve
9 more than two consecutive four-year terms. The remainder of any term to which a member is
10 appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for
11 reappointment. Nonlegislative citizen members shall have experience or expertise, professional or
12 personal, in one or more of the following areas: natural resource protection and conservation,
13 construction and real estate development, natural habitat protection, environmental resource inventory
14 and identification, forestry management, farming, farmland preservation, fish and wildlife management,
15 historic preservation, and outdoor recreation. At least one of the nonlegislative citizen members shall
16 be a farmer. Members of the Board shall post bond in the penalty of \$5,000 with the State Comptroller
17 prior to entering upon the functions of office.

18 B. The Secretary of Natural Resources shall serve as the chairman of the Board of Trustees.
19 The chairman shall serve until his successor is appointed. The members appointed as provided in
20 subsection A shall elect a vice chairman annually from among the members of the Board. A majority of
21 the members of the Board serving at any one time shall constitute a quorum for the transaction of
22 business. The board shall meet at the call of the chairman or whenever a majority of the members so
23 request.

24 C. Trustees of the Foundation shall receive no compensation for their services. All members
25 shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their
26 duties on behalf of the Foundation as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of
27 expenses of the members shall be provided by the Department of Conservation and Recreation.

28 D. The chairman of the Board and any other person designated by the Board to handle the
29 funds of the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the

1 Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be
2 paid from funds available to the Foundation for such purpose.

3 E. The Board shall seek assistance in developing grant criteria and advice on grant priorities
4 and any other appropriate issues from a task force consisting of the following agency heads or their
5 designees: the Director of the Department of Conservation and Recreation, the Commissioner of
6 Agriculture and Consumer Services, the State Forester, the Director of the Department of Historic
7 Resources, the Director of the Department of Game and Inland Fisheries and the Executive Director of
8 the Virginia Outdoors Foundation. The Board may request any other agency head to serve on or
9 appoint a designee to serve on the task force.

10 F. The chairman of the Board shall submit to the Governor and the General Assembly a
11 biennial executive summary of the interim activity and work of the Board no later than the first day of
12 each even-numbered year regular session of the General Assembly. The executive summary shall
13 include, but not be limited to, (i) implementation of the Foundation's strategic plan, (ii) grant projects
14 under consideration for acquisition with Fund moneys, and (iii) expenditures from the Fund, including a
15 description of the extent to which such expenditures have achieved a fair geographic distribution of
16 land protected as provided in § 10.1-1021.1. The executive summary shall be submitted as provided in
17 the procedures of the Division of Legislative Automated Systems for the processing of legislative
18 documents and reports and shall be posted on the General Assembly's website.

19 **§ 10.1-1020. Virginia Land Conservation Fund; purposes of Foundation.**

20 A. The Foundation shall establish, administer, manage, including the creation of reserves, and
21 make expenditures and allocations from a special, nonreverting fund in the state treasury to be known
22 as the Virginia Land Conservation Fund, hereinafter referred to as the Fund. The Foundation shall
23 establish and administer the Fund solely for the purposes of:

24 1. Acquiring fee simple title to or other rights, interests or privileges in property for the
25 protection or preservation of ecological, cultural or historical resources, lands for recreational
26 purposes, state forest lands, and lands for threatened or endangered species, fish and wildlife habitat,
27 natural areas, agricultural and forestal lands and open space; and

28 2. Providing grants to state agencies, including the Virginia Outdoors Foundation, and matching
29 grants to other public bodies and holders for acquiring fee simple title to or other rights, interests or

1 privileges in real property for the protection or preservation of ecological, cultural or historical
2 resources, lands for recreational purposes, and lands for threatened or endangered species, fish and
3 wildlife habitat, natural areas, agricultural and forestal lands and open space. State agency projects
4 shall include, but not be limited to, the purchase of state wildlife management areas, state forests, state
5 parks, and state natural area preserves. The Board shall establish criteria for making grants from the
6 Fund, including procedures for determining the amount of each grant and the required match. The
7 criteria shall include provisions for grants to localities for purchase of development rights programs.

8 Interests in land acquired as provided in subdivision 1 of this subsection may be held by the
9 Foundation or transferred to state agencies or other appropriate holders. Whenever a holder
10 acquires any interest in land other than a fee simple interest as a result of a grant or transfer from
11 the Foundation, such interest shall be held jointly by the holder and a public body. Whenever a
12 holder acquires a fee simple interest in land as a result of a grant or transfer from the Foundation,
13 a public body shall hold an open space easement in such land.

14 B. The Fund shall consist of general fund moneys and gifts, endowments or grants from the
15 United States government, its agencies and instrumentalities, and funds from any other available
16 sources, public or private, including deposits to it from the Virginia Natural and Historic Resources Fund
17 established in §10.1-2504. Such moneys, gifts, endowments, grants or funds from other sources may
18 be either restricted or unrestricted. For the purposes of this chapter, "restricted funds" shall mean
19 those funds received by the Board to which specific conditions apply; "restricted funds" shall include,
20 but not be limited to, general obligation bond moneys and conditional gifts. "Unrestricted funds" shall
21 mean those received by the Foundation to which no specific conditions apply; "unrestricted funds" shall
22 include, but not be limited to, moneys appropriated to the Fund by the General Assembly to which no
23 specific conditions are attached, deposits from the Virginia Natural and Historic Resources Fund
24 established in §10.1-2504, and unconditional gifts.

25 C. After an allocation for administrative expenses has been made as provided in subsection F,
26 the remaining unrestricted funds in the Fund shall be allocated by the Board of Trustees as follows:

27 ~~1. Twenty-five percent shall be transferred to the Open Space Lands Preservation Trust Fund~~
28 ~~to be used as provided in § 10.1-1801.1; and~~

29 ~~2. Seventy-five percent shall be divided equally among the following four~~ 5 ~~uses:~~ (i) natural

1 area protection; (ii) open spaces, wildlife habitat preservation, and parks; (iii) farmlands and forest
2 preservation; ~~and~~ (iv) historic area preservation; and (v) transfers to the Open-Space Lands
3 Preservation Trust Fund to be used as provided in § 10.1-1801.1. No less than 75% of the unrestricted
4 funds shall be equally allocated to each of the 5 uses specified in this subsection, with the balance to
5 be allocated by the Board of Trustees based on the merits of the grant project applications received.
6 ~~Of the amount allocated as provided in this subdivision, at least one third shall be used to secure~~
7 ~~easements~~ Easements to be held or co-held by a public body shall be a priority use of funds. Monies
8 available from grants that are withdrawn shall be not be subject to reallocation to the originally specified
9 use. Matching grant funds provided pursuant to this section shall be expended by the holder or public
10 body within 2 years of receiving the funds, except that the Department may grant an extension of up to
11 one year.

12 D. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and
13 shall not revert to the general fund. Interest earned on moneys received by the Fund other than bond
14 proceeds shall remain in the Fund and be credited to it.

15 E. A portion of the Fund, not to exceed twenty percent of the annual balance of unrestricted
16 funds, may be used to develop properties purchased in fee simple with the assets of the Fund for
17 public use including, but not limited to, development of trails, parking areas, infrastructure, and
18 interpretive projects or to conduct environmental assessments or other preliminary evaluations of
19 properties prior to the acquisition of any property interest.

20 F. Up to ~~\$250,000~~ \$350,000 per year of the interest generated by the Fund may be used for
21 the Foundation's administrative expenses, including, but not limited to, the expenses of the Board and
22 its members, development of the Foundation's strategic plan, development and maintenance of an
23 inventory of properties as provided in subdivision 1 b of § 10.1-1021, development of a needs
24 assessment for future expenditures as provided in subdivision 1 c of § 10.1-1021, ~~and fulfillment of~~
25 reporting requirements, grants review and management, and long-term monitoring of project
26 agreement compliance. All such expenditures shall be subject to approval by the Board of Trustees.

27 G. The Comptroller shall maintain the restricted funds and the unrestricted funds in separate
28 accounts.

29 H. For the purposes of this section, "public body" shall have the meaning ascribed to it in §

10.1-1700, and "holder" shall have the meaning ascribed to it in § 10.1-1009.

§ 10.1-1021. Powers of the Foundation.

In order to carry out its purposes, the Foundation shall have the following powers and duties:

1. To prepare a comprehensive plan that recognizes and seeks to implement all of the purposes for which the Foundation is created. In preparing this plan, the Foundation shall:

a. Develop a strategic plan for the expenditure of unrestricted moneys received by the Fund. In developing a strategic plan for expending unrestricted moneys from the Fund, the Board of Trustees shall establish criteria for the expenditure of such moneys. The plan shall take into account the purposes for which restricted funds have been expended or earmarked. Such criteria may include:

- (i) The ecological, outdoor recreational, historic, agricultural and forestal value of the property;
- (ii) An assessment of market values;
- (iii) Consistency with local comprehensive plans;
- (iv) Geographical balance of properties and interests in properties to be purchased;
- (v) Availability of public and private matching funds to assist in the purchase;
- (vi) Imminent danger of loss of natural, outdoor, recreational or historic attributes of a significant portion of the land;
- (vii) Economic value to the locality and region attributable to the purchase; and
- (viii) Advisory opinions from local governments, state agencies or others;

b. Develop an inventory of those properties in which the Commonwealth holds a legal interest for the purpose set forth in subsection A of § 10.1-1020;

c. Develop a needs assessment for future expenditures from the Fund. In developing the needs assessment, the Board of Trustees shall consider among others the properties identified in the following: (i) Virginia Outdoors Plan, (ii) Virginia Natural Heritage Plan, (iii) Virginia Institute of Marine Science Inventory, (iv) Virginia Joint Venture Board of the North American Waterfowl Management Plan, and (v) Virginia Board of Historic Resources Inventory. In addition, the Board shall consider any information submitted by the Department of Agriculture and Consumer Services on farmland preservation priorities and any information submitted by the Department of Forestry on forest land initiatives and inventories; and

d. Maintain the inventory and needs assessment on an annual basis.

2. To expend directly or allocate the funds received by the Foundation to the appropriate state agencies for the purpose of acquiring those properties or property interests selected by the Board of Trustees. In the case of restricted funds the Board's powers shall be limited by the provisions of § 10.1-1022.

~~3. To submit a report biennially on the status of the Fund to the Governor and the General Assembly including, but not limited to, (i) implementation of its strategic plan, (ii) projects under consideration for acquisition with Fund moneys, and (iii) expenditures from the Fund, including a description of the extent to which such expenditures have achieved a fair geographic distribution of land protected as provided in § 10.1-1021.1.~~

~~4.~~ 3. To enter into contracts and agreements, as approved by the Attorney General, to accomplish the purposes of the Foundation.

~~5.~~ 4. To receive and expend gifts, grants and donations from whatever source to further the purposes set forth in subsection B of § 10.1-1020.

~~6.~~ 5. To sell, exchange or otherwise dispose of or invest as it deems proper the moneys, securities, or other real or personal property or any interest therein given or bequeathed to it, unless such action is restricted by the terms of a gift or bequest. However, the provisions of § 10.1-1704 shall apply to any diversion from open-space use of any land given or bequeathed to the Foundation.

~~7.~~ 6. To conduct fund-raising events as deemed appropriate by the Board of Trustees.

~~8.~~ 7. To do any and all lawful acts necessary or appropriate to carry out the purposes for which the Foundation and Fund are established.

§ 10.1-1801.1. Open-Space Lands Preservation Trust Fund.

A. The Foundation shall establish, administer, manage, including the creation of reserves, and make expenditures and allocations from a special nonreverting fund in the state treasury to be known as the Open-Space Lands Preservation Trust Fund, hereinafter referred to as the Fund. The Foundation shall establish and administer the Fund solely for the purpose of providing grants in accordance with this section to localities acquiring open-space easements or persons conveying conservation or open-space easements on agricultural, forestal, or other open-space land pursuant to the Open-Space Land Act (§ 10.1-1700 et seq.) and, if applicable, the Virginia Conservation Easement Act (§ 10.1-1009 et seq.).

1 B. The Fund shall consist of general fund moneys, gifts, endowments or grants from the United
2 States government, its agencies and instrumentalities, and funds from any other available sources,
3 public or private, including deposits to it from the Virginia Land Conservation Fund established in
4 §10.1-1020. The Comptroller shall maintain the Virginia Land Conservation Fund deposited funds in a
5 separate account.

6 C. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and
7 shall not revert to the general fund. Interest earned on moneys received by the Fund shall remain in
8 the Fund and be credited to it.

9 D. The purpose of grants made from the Fund shall be to aid localities acquiring open-space
10 easements or persons conveying conservation or open-space easements with the costs associated
11 with the conveyance of the easements, which may include legal costs, appraisal costs or all or part of
12 the value of the easement. In cases where a grant is used to purchase all or part of the value of an
13 easement, moneys from the Fund may also be used by the Foundation to pay for an appraisal,
14 provided that the appraisal is the only appraisal paid for by the Foundation in the acquisition of a
15 particular easement. To be eligible for a grant award, the conservation or open-space easement shall
16 provide that:

- 17 1. The easement is perpetual in duration;
- 18 2. The easement is conveyed to the Foundation and a local coholder; and
- 19 3. If the local coholder ceases to exist, the easement shall vest solely in the Foundation. If a
20 local coholder of an easement for which a grant has been awarded under this section ceases to exist,
21 the Foundation shall within two years convey the interest in the easement that was held by the local
22 coholder to another qualified local coholder. If no qualified local coholder is willing to accept the
23 easement, the Foundation shall diligently continue to seek a qualified local coholder.

24 For the purposes of this section, "local coholder" means the governing body of the locality in
25 which the easement is located; a holder as defined in § 10.1-1009; a public recreational facilities
26 authority; other local entity authorized by statute to hold open-space or preservation easements, or a
27 soil and water conservation district, if authorized to hold an easement under the Open-Space Land Act
28 (§ 10.1-1700 et seq.). The Board of Historic Resources may be a local coholder if the easement is on
29 land that abuts land on which a designated historic landmark, building, structure, district, object or site

1 is located.

2 E. The Foundation shall establish guidelines for submittal and evaluation of grant applications.

3 In evaluating grant applications, the Foundation may give priority to applications that:

4 1. Request a grant to pay only legal and appraisal fees for a conservation or open-space
5 easement that is being donated by the landowner;

6 2. Request a grant to pay costs associated with conveying a conservation or open-space
7 easement on a family-owned or family-operated farm; or

8 3. Demonstrate the applicant's financial need for a grant.

9 F. No open-space land for which a grant has been awarded under this section shall be
10 converted or diverted from open-space land use unless:

11 1. Such conversion or diversion is in compliance with subsection A of § 10.1-1704; and

12 2. The easement on the land substituted for land subject to an easement with respect to which
13 a grant has been made under this section meets the eligibility requirements of this section.

14 G. Up to ~~\$100,000~~ \$200,000 per year of any interest generated by the Fund may be used for
15 the Foundation's administrative expenses.

16 H. The Executive Director shall submit to the Executive Secretary of the Virginia Land
17 Conservation Foundation by November 1 of each year, an annual summary of projects both completed
18 and under consideration for acquisition with monies from the Virginia Land Conservation Fund account.
19 The report shall include an accounting for all funds deposited to the account.

20 **§ 10.1-2128. Virginia Water Quality Improvement Fund established; purposes.**

21 A. There is hereby established in the state treasury a special permanent, nonreverting fund, to
22 be known as the "Virginia Water Quality Improvement Fund." The Fund shall be established on the
23 books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly
24 which shall include, unless otherwise provided in the general appropriation act, ten percent of the
25 annual general fund revenue collections that are in excess of the official estimates in the general
26 appropriation act and ten percent of any unreserved general fund balance at the close of each fiscal
27 year whose reappropriation is not required in the general appropriation act. The Fund shall also
28 consist of such other sums as may be made available to it from any other source, public or private,
29 including deposits to it from the Virginia Natural and Historic Resources Fund established in §10.1-

1 2504, and shall include any penalties or damages collected under this article, federal grants solicited
2 and received for the specific purposes of the Fund, and all interest and income from investment of the
3 Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall
4 not revert to the general fund but shall remain in the Fund. All moneys designated for the Fund shall
5 be paid into the state treasury and credited to the Fund. The Fund shall be exempt from indirect costs
6 assessed by the Department of Accounts. Moneys in the Fund shall be used ~~solely~~ for Water Quality
7 Improvement Grants, for state match for the federal Conservation Reserve Enhancement Program, and
8 for Total Maximum Daily Load plan development and implementation. Expenditures and disbursements
9 from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon the
10 written request of the Director of the Department of Environmental Quality or the Director of the
11 Department of Conservation and Recreation as provided in this chapter.

12 B. The purpose of the Fund is to provide Water Quality Improvement Grants to local
13 governments, soil and water conservation districts, institutions of higher education and individuals for
14 point and nonpoint source pollution prevention, reduction and control programs and efforts undertaken
15 in accordance with the provisions of this chapter, to provide a source of state match for the federal
16 Conservation Reserve Enhancement Program, and to provide funding for Total Maximum Daily Load
17 plan development and implementation. ~~Principal in the~~ The Fund shall not be used for agency
18 operating expenses or for purposes of replacing or otherwise reducing any general, nongeneral, or
19 special funds allocated or appropriated to any state agency; however, nothing in this section shall be
20 construed to prevent the award of a Water Quality Improvement Grant to a local government in
21 connection with point or nonpoint pollution prevention, reduction and control programs or efforts
22 undertaken on land owned by the Commonwealth and leased to the local government. \$400,000 per
23 year of the interest generated by the Fund shall be allocated equally between the Department of
24 Conservation and Recreation and the Department of Environmental Quality for administrative expenses
25 associated with this Chapter.

26 **§ 10.1-2129. Agency coordination; conditions of grants.**

27 A. ~~Except as may otherwise be specified in the general appropriation act, the~~ The Secretary of
28 Natural Resources, in consultation with the State Forester and the Directors of the Departments of
29 Environmental Quality and Conservation and Recreation and of the Chesapeake Bay Local Assistance

1 Department, and with the advice and guidance of the Board of Conservation and Recreation, the
2 Virginia Soil and Water Conservation Board, the State Water Control Board, and the Chesapeake Bay
3 Local Assistance Board, shall annually, following a public comment period of at least thirty days'
4 duration and a public hearing, allocate moneys in the Fund, for the purposes established in § 10.1-
5 2128, between point and nonpoint source pollution, both of which shall receive allocations each year.
6 After allocation for any administrative expenses has been made as provided in § 10.1-2128, remaining
7 interest in the Fund at the direction of the Secretary shall be allocated according to the procedures
8 outlined in this section.

9 ~~B. Except as may otherwise be specified in the general appropriation act, the~~ The Secretary of
10 Natural Resources, in consultation with the State Forester and the Directors of the Departments of
11 Environmental Quality and Conservation and Recreation and of the Chesapeake Bay Local Assistance
12 Department, and with the advice and guidance of the Board of Conservation and Recreation, the
13 Virginia Soil and Water Conservation Board, the State Water Control Board, and the Chesapeake Bay
14 Local Assistance Board, shall develop written grant guidelines that (i) specify eligibility requirements; (ii)
15 govern the application for and the distribution and conditions of Water Quality Improvement Grants;
16 and (iii) list criteria for prioritizing funding requests. In developing the grant guidelines the Secretary
17 shall evaluate and consider, in addition to such other factors as may be appropriate to most effectively
18 restore, protect and improve the quality of state waters: (i) specific practices and programs proposed in
19 any tributary plan required by §§ 2.2-218 through 2.2-220, and the associated effectiveness and cost
20 per pound of nutrients removed; (ii) water quality impairment or degradation caused by different types
21 of nutrients released in different locations from different sources; and (iii) environmental benchmarks
22 and indicators for achieving improved water quality. The process for development of grant guidelines
23 pursuant to this subsection shall, at a minimum, include (i) use of an advisory committee composed of
24 interested parties; (ii) a sixty-day public comment period on draft guidelines; (iii) written responses to all
25 comments received; and (iv) notice of the availability of draft grant guidelines and final grant guidelines
26 to all who request such notice.

27 In addition to those the Secretary deems advisable to most effectively restore, protect and
28 improve the quality of state waters, the criteria for prioritizing grant funding requests shall include: (i)
29 whether the location of the water quality restoration, protection or improvement project or program is

1 within a watershed or subwatershed with documented water nutrient loading problems or adopted
2 nutrient reduction goals; (ii) documented water quality impairment; (iii) the achievement of greater water
3 quality improvements than that required by state or federal law; and (iv) the availability of other funding
4 mechanisms. In the event of a local government grant application request for greater than fifty percent
5 funding for any single project, the Directors and the Secretary shall consider the comparative revenue
6 capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The
7 development or implementation of cooperative programs developed pursuant to subsection B of §
8 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement Grants
9 from the moneys allocated to nonpoint source pollution.

10 **§ 10.1-2131. Point source pollution funding; conditions for approval.**

11 A. The Department of Environmental Quality shall be the lead state agency for determining the
12 appropriateness of any grant related to point source pollution to be made from the Fund to restore,
13 protect or improve state water quality.

14 B. The Director of the Department of Environmental Quality shall, subject to available funds and
15 in coordination with the Director of the Department of Conservation and Recreation, direct the State
16 Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established
17 pursuant to § 10.1-2129. The Director shall manage the allocation of grants from the Fund to ensure
18 the full funding of executed grant agreements.

19 C. Notwithstanding the priority provisions of § 10.1-2129, the Director of the Department of
20 Environmental Quality ~~shall not~~ may also authorize the distribution of grants from the Fund for
21 purposes ~~other than~~ of financing at least fifty percent of the cost of design and installation of biological
22 nutrient removal facilities or other nutrient removal technology at publicly owned treatment works, or for
23 providing state match for other critical water quality needs. until such time as all tributary plans required
24 by §§ 2.2-218 through 2.2-220 are developed and implemented unless he finds that there exists in the
25 Fund sufficient funds for substantial ~~Substantial~~ and continuing progress in implementation of the
26 tributary plans required by §§ 2.2-218 through 2.2-220 remains a priority for selecting projects to
27 receive monies from the Fund. In addition to the provisions of § 10.1-2130, all grant agreements
28 related to nutrients shall include: (i) numerical concentrations on nutrient discharges to state waters
29 designed to achieve the nutrient reduction goals of the applicable tributary plan; (ii) enforceable

provisions related to the maintenance of the numerical concentrations that will allow for exceedences of no more than ten percent and for exceedences caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing biological nutrient removal facilities or other nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking and revolving loan distribution criteria. At least fifty percent of the cost of the design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment works meeting the nutrient reduction goal in an applicable tributary plan and incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund provided the grant is made pursuant to an executed agreement consistent with the provisions of this chapter.

~~Subsequent to the implementation of the tributary plans, the~~ The Director may authorize disbursements from the Fund for any water quality restoration, protection and improvements related to point source pollution that are clearly demonstrated as likely to achieve measurable and specific water quality improvements, including, but not limited to, cost effective technologies to reduce nutrient loads. Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize grants, including grants to institutions of higher education, for technical assistance related to nutrient reduction.

§ 10.1-2132. Nonpoint source pollution funding; conditions for approval.

A. The Department of Conservation and Recreation shall be the lead state agency for determining the appropriateness of any grant related to nonpoint source pollution to be made from the Fund to restore, protect and improve the quality of state waters.

B. The Director of the Department of Conservation and Recreation shall, subject to available funds and in coordination with the Director of the Department of Environmental Quality, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The Director shall manage the allocation of grants from the Fund to ensure the full funding of executed grant agreements.

C. Grant funding may be made available to local governments, soil and water conservation districts, institutions of higher education and individuals who propose specific initiatives that are clearly

demonstrated as likely to achieve reductions in nonpoint source pollution, including, but not limited to, excess nutrients and suspended solids, to improve the quality of state waters. Such projects may include, but are in no way limited to, the acquisition of conservation easements related to the protection of water quality and stream buffers; conservation planning and design assistance to develop nutrient management plans for agricultural operations; instructional education directly association with the implementation or maintenance of a specific nonpoint source pollution reduction initiative; implementation of cost-effective nutrient reduction practices; total maximum daily load plan implementation; cost-share for agricultural best management practices; and reimbursement to local governments for tax credits and other kinds of authorized local tax relief that provides incentives for water quality improvement. ~~The Director shall give initial priority consideration to the distribution of grants from the Fund for the purposes of implementing the tributary plans required by §§ 2.2-218 through 2.2-220.~~ Substantial and continuing progress in implementation of the tributary plans required by §§ 2.2-218 through 2.2-220 remains a priority for selecting projects to receive monies from the Fund. ~~Until such time as the tributary plans are developed and implemented, the~~ The Director shall distribute fifty percent of the nonpoint grant funding to ~~their~~ areas of the Commonwealth covered by the Chesapeake Bay tributary plans implementation and fifty percent to areas of the Commonwealth not to be covered by the Chesapeake Bay tributary plans, ~~unless otherwise provided in the general appropriation act.~~

§ 10.1-2134. Annual report by Directors of the Departments of Environmental Quality and Conservation and Recreation.

The Directors of the Departments of Environmental Quality and Conservation and Recreation shall, by January 1 of each year, report to the Governor and the General Assembly the amounts and recipients of funding and grants made from the Virginia Water Quality Improvement Fund and the specific and measurable pollution reduction achievements to state waters anticipated as a result of each grant award, together with the amounts of continued funding required for the coming fiscal year under all fully executed grant agreements.